HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1995/03 (SS)

Sri Shanti Prasad

vs

Union of India

Approved for reporting

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~~Not approved for reporting~~

Date of decision 22.03.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.1995 of 2003 (SS)

Sri Shanti Prasad s/o Deveshwar Prasad
R/o Village Khambakhal, Tehsil Pratap Nagar
District Tehri Garhwal ..... Petitioner

Versus

1. Union of India
2. Commandant Bombay Engineer Group
   Krikee, Puna, Maharastra
3. Record Officer, Bombay Engineer Group,
   Krikee, Puna, Maharasatra.
4. Controller of defence Accounts (Pension)
   Dropadi Ghat, Allahabad. ..... Respondents

Sri H.M. Raturi, Advocate for the petitioner
Smt. Anjali Bhargava, Standing Counsel (Central) for the respondents.

Dated: March 22, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri H.M. Raturi, counsel for the petitioner and Smt. Anjali Bhargava, Standing Counsel for the Central Government for respondents No. 1 to 4.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus directing the respondents to release the disability pension of the petitioner from the date of his discharge from the Army.

Briefly stated the facts giving rise to the present writ petition are that petitioner was enrolled in the army on 8.1.1970 as a soldier. He was invalidated out of service on 30.10.1977 in medical category 'EEE' as he was suffering from 'Hyper-hydrosis'. The medical board has opined invaliding disease as constitutional and not connected with service conditions.

The PCDA (P) Allahabad had rejected the claim of the petitioner for disability pension on the plea that the disease is neither attributable to nor aggravated by Military Service.

The petitioner has also submitted that he was not given any treatment by the Army authorities and consequently he was discharged from Army services and was not given disability pension.

The respondents have filed counter affidavit and admitted that the petitioner was enrolled in the Indian Army on 8th June 1970 and invalided out of service on 13th October 1977. The respondents have submitted that the petitioner was brought before the invaliding medical board which opined his disease as neither attributable to nor aggravated by military service. His disability was assessed at 20% permanent. The petitioner was declared not entitled for the grant of disability pension under the provisions of paragraph 173 of Pension Regulations, Par-I (1961).

From the record it appears that the petitioner has served seven year 10 months in the Army and as such according to the petitioner he is entitled for the payment of disability pension in accordance with Rule 5. The grant of disability Pension is governed by Rule 10 and 48 of Defence Services Regulations.

Rule 10 of the said Rules reads thus:

"Casual leave counts as duty except as provided for the Rule 11 (a)"

As per this Rule when an army personnel is on casual leave, same is counted a duty unless he comes under any one of the exceptions under Rule 11 (a) of the Rules. It is not the case of the respondents that the appellant comes under any such exceptions. Therefore, as per rule 10(a), the appellant was on duty at the time of the accident.

Rules 48 of the said Regulation contemplates admissibility of disability pension. It has enumerated various cases under which an army personnel is entitled to the grant of disability pension.

Rule 48 reads thus:

"Disability pension when admissible an officer who is retired from military service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 per cent or over may, on retirement, be awarded a disability pension consisting of a service element and a disability element in accordance with the regulations in this section.

In respect of accidents the following rules will be observed.

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……

A person is also deemed to be on duty during the period of participation in recreation, organised or permitted by Service Authorities and to travelling in a body or singly under organised arrangements. A person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station at public expense."

The law regarding disability pension is well settled. The Apex Court in the case Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

"In the case of normal service or individual pension specified 15 years qualifying period of Service is required, while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury of illness. Sanction of disability pension, therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations."

Para 173 of Pension Regulation reads as under:

173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or

aggravated by military service in non-battle casualty and is assessed at 20 per cent or over."

It has been held by the Apex court in the Case Madan Singh Shekhawat vs. Union of India and others (2000) 1 UPLBEC 3471 as under:

"The controversy in this case is whether the qualification" at public expense" found in this rule is so mandatory as to deprive an army personnel who is travelling to his leave station or vice versa on duty but at his own expense, of the benefit of disability pension if need arises.

It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

In Seaford Court Estates Ltd. V. Asher (1949 2 All. ER 155, Lord Denning, J. (as and then was) held:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament.……and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

The question of disability pension came up for consideration in the case Mahavir Singh Rawat vs. Union of India and others 2001 (1) A.W.C. 363 it has been held as under:

" In the case of normal service or individual pension specified 15 years qualifying period of service is required while disability pension is not dependent on any particular length of service. Disability pension is awarded to an employee who has been invalided on account of disability which has occasioned due to any hurt, injury of illness. Sanction of disability pension, therefore, is not dependent on any particular length of service. The provisions of Para 132 of Pension Regulations are not attracted in the present case. The case of the petitioner for disability pension is squarely covered by the provisions of Para 173 of the Pension Regulations."

The facts mentioned above shows that the petitioner has rendered more than 7 years service in the Indian Army and has expired a valuable prime time of his life in the service of Army. There may be confliction and contradiction on the opinion that the alleged allergy hyper-hydrosis in the feet of the petitioner was constitutional or attributable to the military service but there is no doubt that the said disease was borne out to the petitioner during his employment in the Army and thus the employer of the petitioner is bound to give treatment to the petitioner during service and if he was not found fit for military service, to give him disability pension.

The interpretation of the Rules should be done in such a way so that it may become beneficial and not in a restrictive way, which would negate the very object of such Rules.

Thus in view of above, a writ of mandamus is issued directing the respondents to pay disability pension to the petitioner at the admissible rate with effect from his discharge from military service within one month after obtaining the certified copy of this order.

Accordingly, writ petition is allowed. No order as to costs.

Rajesh Tandon, J.

March 22, 2006

*Dhyani